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We the People and We the States:

Liberalism and Republicanism in Antifederalist Amendments

In 1787 the Constitutional Convention submitted the draft of the Constitution to the states for ratification and one of the most vigorous, widespread, and important political debates in American history began. Supporters of the Constitution, known as Federalists, and its opponents, known as Antifederalists, eventually reached a compromise by agreeing to amend the Constitution. After further compromise the Federalists and Antifederalists were able to agree on the first ten amendments, the Bill of Rights. Although the Bill of Rights was accepted and has since been lauded as a fundamental part of our political system, it represents only a fraction of the amendments the Antifederalists wanted to add to the Constitution. “What are the rights which they do not propose to secure—which they reject?—for I contend there are many essential and vital rights which are omitted. One is the power of direct taxation.”¹ This quote demonstrates revolutionary hero Patrick Henry’s position on the issue of adding amendments to the Constitution. The vast majority of Americans would not consider the power of direct taxation for states an essential right, much less one that should have been added to the first constitutional amendments with our sacred guarantees of freedom of religion, speech, and the press. Nevertheless, Patrick Henry employed all his rhetorical skill and political influence in his efforts to include protection for both state and individual rights in the constitutional amendments proposed by the Virginia state ratifying convention in 1788.

Henry and his fellow Antifederalists, in Virginia and across the nation, furiously opposed the adoption of the Constitution. They believed the framers had abandoned the ideals of the revolution, while they remained true to the spirit of 1776. The Antifederalist argued that the United States had fought the American Revolution to escape the tyranny of a central government and a scant four years after the peace treaty was signed the Federalists were trying to revive everything they had fought against. The disagreements between the Federalists and Antifederalists originated with their very different visions of society. The Federalists used Great Britain as their model; they wanted to create a strong nation, with a strong central government that would eventually become a player on the world stage. The Antifederalists wanted a new type of government, not an American version of a European model. They envisioned a decentralized government with strong state governments that allowed wider political participation for ordinary citizens. Antifederalists saw themselves as Virginians, Pennsylvanians and New Yorkers; so much so that they felt the diminished role of the states in the Constitution threatened their identity. Their concern for their identity and position in the new nation is evident in their oft repeated phrase “state annihilation.” If the states became superfluous then they would lose their identity and political voice. The lack of a bill of rights in the Constitution only increased these fears, as the states’ bills of rights did not apply to the national government.

The Antifederalists delivered an outpouring of constitutional critiques in the form of speeches, essays, and pamphlets. Throughout the Antifederalist rhetoric runs the constant complaint that the Constitution provided little or no security for either individual or states’ rights. The Antifederalists tried to mitigate these perceived defects with demands for constitutional amendments. They proposed the now familiar guarantees of individual rights that many Americans regard as the fundamental principles of our political system. At the same time, the

Antifederalists demanded other rights which seem bizarre to modern Americans. They deemed guarantees of states' rights necessary for a bill of rights and strict limitations of federal power crucial for the preservation of American liberty.

The key to understanding the Antifederalists' demands is a good grasp of the political ideologies that shaped their opinions. For many historians, ideology is an important element needed to understand the events and trends of the American Revolution and the early republic. Historians do not agree about the presence of a dominant ideological tradition which influenced the American founding generation. One group of scholars emphasizes the English republican or Real Whig tradition, while another stresses the importance of the liberal tradition that originated with the philosopher John Locke. Still other scholars argue that no single tradition was dominant and Americans were influenced by multiple political philosophies. Multiple ideologies certainly influenced Antifederalist thought.

The republican tradition was influenced by ancient Greek and Roman political philosophy and some of the writings of Renaissance Italian political philosopher, Niccolo Machiavelli. Seventeenth-century English political philosophers theorized about this ideology, while radical "Real Whig" eighteenth-century pamphleteers and journalists applied it to their own political situation. Close ties between England and her American colonies in the early eighteenth century ensured the spread of republican thought to America. The republican tradition envisioned power and liberty as locked in a constant struggle. It emphasized the corrupting tendencies of power and the need for virtuous and vigilant citizens to constantly and jealously guard their freedoms from the encroachments of the state. Citizens should be actively involved in civic life as voters and members of the militia. This tradition also emphasized the importance of the community and the necessity of virtuous, disinterested citizens to put the needs of state and

community before themselves. The constant vigilance and suspicion of government meant that the republican tradition was characterized by a strong fear of conspiracy and a mood of paranoia. Historians who emphasize the influence of the republican tradition in early American history include Bernard Bailyn, J.G.A. Pocock, Lance Banning, and Saul Cornell.²

The liberal tradition was heavily influenced by the political philosophy of John Locke. Lockean liberalism emphasizes the marketplace, individualism, and the moral legitimacy of private interest.³ Particularly important for a discussion of Antifederalism and constitutional amendments is the Lockean theory of natural rights and the origin and purposes of government. Man originally existed in the state of nature in which every individual possessed the natural rights of life, liberty and property, but was obligated by the natural law to respect those rights in others. Government was created by an agreement or “social contract” for the purpose of facilitating the protection of natural rights. Humans gave up some of their rights to make government feasible but retained all the others. Governments’ sole purpose was the protection of life, liberty and property.⁴ Included in this philosophy was the right of revolution against any government that did not guarantee those rights. Lockean liberalism provided an important concept of inalienable individual rights that government was obligated to acknowledge and respect. Historians who emphasize the importance of Lockean liberalism in early America include Joyce Appleby and T.H. Breen.⁵

Other historians argue that it is incorrect to take a black and white, either/or position on ideology. There were multiple ideologies in eighteenth-century America and Americans had a tendency to incorporate aspects of any or all of them in their political philosophy. Historian Isaac Kramnick identifies four political languages that influenced aspects of the ratification debate: republicanism, Lockean liberalism, work-ethic Protestantism, and state-centered theories of

power.⁶ Several early American groups, including the Antifederalists, drew aspects of their political thought from more than one ideology.

A common view of Antifederalists is that they were a group of reactionary political dissidents who were obsessed with the potential of governmental abuse of power. They were locked in a pitched battle with their Federalist opponents, both groups drawing their ideas from distinct, incompatible political traditions. This view is inaccurate and limited as the Antifederalists combined aspects of both the republican tradition and Lockean liberalism. This paper will extend Kramnick's argument for multiple influences and argue that the blend of the liberal and republican ideologies in Antifederalist thought is most apparent in the Antifederalists' proposed Constitutional amendments. Indeed, the unusual mix of amendments they wanted makes the most sense if viewed as the product of two political philosophies. Their desire for a very limited federal government and community-oriented concern for the states' rights came directly out of republican ideology. At the same time, the influence of Lockean liberalism is evident in their theory of the origin of government and their inclusion of guarantees of many individual natural rights in their proposed amendments. The Antifederalists' ability to combine seemingly contradictory political philosophies demonstrates that there are few hard and fast lines with ideology. The coexistence of liberalism and republicanism in Antifederalist thought calls for a reexamination of the distinctions historians have drawn about these philosophies.

Pennsylvania, Massachusetts, Virginia, and New York were the most populous and influential states at the time of the ratification debate. Virginia was the most staunchly Antifederalist of these four, but Pennsylvania and New York also had large numbers of Antifederalists. Massachusetts had large numbers of both Federalists and Antifederalists, and notably it had the first state ratifying convention to recommend amendments to the Constitution.

This paper will examine the blend of republican and liberal influence in the letters, essays, or speeches of two Antifederalist figures from each of the following states: Pennsylvania, Massachusetts, Virginia and New York. It will also examine the variety of amendments proposed either by the state ratifying convention or the dissenting minority of each of these states. It is important to note that the Antifederalists' insistence was not the only factor in the development of proposed amendments. Although they were often the loudest, Antifederalists were not the only voices calling for amendments. However, their efforts were crucial in rousing initial support for the first amendments.

Pennsylvania

The ratification debate in Pennsylvania was in many ways the continuation of old geographic and political rivalries. Eastern and western Pennsylvanians had been fighting amongst themselves for control of the state well before the beginning of the American Revolution. The legislature was dominated by the Quaker and Anglican merchants and tradesmen of Philadelphia and the eastern part of the state. The Scots-Irish and German immigrants in the rural western part of the state were constantly frustrated because they felt their concerns and interests were not adequately represented in Philadelphia. In the ratification debate eastern Pennsylvanians tended to be Federalist supporters of the Constitution, while the westerners were Antifederalists. Pennsylvanians in the backcountry reasoned that if their voices were barely heard in their state legislature, their chances of being heard in the Constitution's highly centralized government were slim.

The ratification debate moved very rapidly in Pennsylvania; it was the first state to call a ratifying convention on November 20, 1787. On December 12, 1787 Pennsylvania was the second state to ratify the Constitution.⁷ Before, throughout, and even after the state ratifying convention, the Pennsylvania Antifederalists were active in their opposition; they wrote prolifically against the ratification of the Constitution. Two Pennsylvanians who opposed the Constitution were an unnamed author known as a Federal Republican and Robert Whitehill, a delegate to the state convention.

A Federal Republican wrote a pamphlet critiquing the Constitution in October, 1787. In his section regarding the lack of a bill of rights he presented a Lockean liberal view of natural rights and the origin of government. “In entering into the social compact, all rights which are not expressly given up to the governors are reserved to the people.”⁸ He argued that the bill of rights would be a declaration of the rights the people already possess, but in his discussion of the specifics of the bill of rights he only mentioned states’ rights. “A bill of rights should either be inserted, or a declaration made, that whatever is not decreed to Congress, is reserved to the several states for their own disposal.”⁹ The author praised the Articles of Confederation for their explicit declaration of states’ rights. This emphasis on states’ rights is characteristic of the Antifederalist interpretation of the republican tradition.

Robert Whitehill was one of the Antifederalist delegates to the state ratification convention. This western Pennsylvanian proposed fifteen amendments in a speech he delivered to the convention on December 12, 1787. In his first seven amendments he included a number of guarantees for individual rights such as freedom of conscience in matters of religion, the right to a fair and prompt trial by jury, the rights to know the charges against one and to confront one’s accusers, freedom of speech and the press, and the right to bear arms.¹⁰ Whitehill also proposed

amendments to control the power of the federal judiciary and guarantee the states' right to tax, their right to control elections to both houses of Congress, and their right to control the militia. In his final amendment he stated "that the sovereignty, freedom, and independency of the several states shall be retained, and every power, jurisdiction and right which is not by this constitution expressly delegated to the United States in Congress assembled."¹¹ The individualistic natural rights amendments demonstrate a Lockean influence, while the concern for states' rights and limiting the national government's power point to a republican influence.

A few days after ratification some of the Pennsylvania Antifederalists (Whitehill was probably among them) published "The Address and Reasons of the Dissent of the Minority of the Convention of Pennsylvania to Their Constituents." They included a list of proposed amendments and their grounds for rejecting the Constitution in this dissenting opinion. One of the Pennsylvanian Antifederalists' grounds for dissent was the lack of the bill of rights. "The first consideration that this review suggests is the omission of a BILL of RIGHTS, ascertaining and fundamentally establishing those unalienable and personal rights of men, without the full, free, and secure enjoyment of which there can be no liberty, and over which it is not necessary for the government to have controul."¹²

For their list of amendments, the Antifederalists borrowed Whitehill's proposal. They called for the security of the right of conscience in matters of religion, prohibition of excessive bail, excessive fines and cruel and unusual punishment, prohibition of unreasonable searches and seizures, freedom of speech, and freedom of the press. Although the authors of the minority opinion combined Whitehill's last amendment with another about states' rights, they retained his arguments and wording. They also wished to limit the national government's power to tax, use the militia, and exercise judicial power. They argued "that the legislative, executive, and judicial

powers be kept separate...a constitutional council to advise the president be appointed...and judges be made completely independent.”¹³

One of the more unusual amendments found in both Whitehill’s speech and the dissenting opinion was “the inhabitants of the several states shall have the liberty to fowl and hunt in seasonable times, on the lands they hold and on all other lands of the United States not inclosed, and in like manner to fish in all navigable waters...without being restrained therein by any laws to be passed by the legislature of the United States.”¹⁴ This particular amendment is a fascinating combination of Lockean liberalism and republicanism. It references a part of Locke that was popular with small landholders, but that Federalists tended to ignore, namely the limited property rights in the state of nature and unenclosed land. At the same time it demonstrates a strong fear of central government controlling aspects of everyday life, a common republican concern. Influenced by both liberalism and republicanism, Whitehill used Locke to support an amendment to protect both individual and community rights against the encroachments of the federal government.

The dissenting opinion and proposed amendments of the Pennsylvania Antifederalists demonstrate a concern for both individual and states’ rights. They wanted security for essential natural rights, limits on the federal government’s power, and guarantees that the states would not be superfluous in the new political system. The influence of the Lockean liberal tradition is evident in the dissent based on the lack bill of rights, and the proposed amendments dealing with individual rights. The influence of the republican ideology is evident in amendments that would limit federal power and strengthen the power and influence of the states.

Massachusetts

The political climate in Massachusetts during the ratification debate was wary. Shays Rebellion had been put down barely a year before and the memory of civil violence was very fresh. Shays Rebellion was provoked primarily by the state legislature's hard currency policies that were very hard on the small farmers of central and especially western Massachusetts. These policies required farmers to pay taxes in hard cash which was very hard to access in a barter environment. Many of these farmers were veterans of the Revolutionary War and felt betrayed and cheated by the economic policies of the new nation. Rebels, known as Shaysites, used tactics that had been successful a few years previously in the American Revolution, such as closing the county courts. The Massachusetts government finally used an army to put down the rebellion in January of 1787. A year later, many westerners who sympathized with or even supported the rebellion were the Antifederalist delegates in the Massachusetts convention.

Massachusetts was the sixth state to ratify the Constitution in February of 1788. It was the first state to include recommended amendments with the ratification decision, a trend that influenced several other state ratifying conventions. Massachusetts had a number of both Federalists and Antifederalists in the state convention, but due to the inclusion of amendments, Federalists gained enough support to ratify the Constitution 187 to 168. While the Antifederalist faction of the Massachusetts convention was comprised primarily of westerners, eastern Massachusetts produced some highly educated and socially prominent Antifederalists such as James Winthrop and Mercy Otis Warren.

Most scholars attribute the Letters of Agrippa to James Winthrop. A descendent of John Winthrop, the founder of the Massachusetts Bay Colony, Winthrop was a member of one the

oldest and most prestigious families in the state. The son of a prominent mathematics professor at Harvard, Winthrop was also a member of the Massachusetts intelligentsia. Like his father, Winthrop was a mathematician and served for many years as head librarian at Harvard. He was also one of the founders of the Massachusetts Historical Society. Winthrop's particular brand of Antifederalism was very Massachusetts oriented and pro commerce, but at the same time was extremely suspicious, even paranoid about the power of the central government.¹⁵

In two letters addressed to the Massachusetts convention and dated January 29, and February 5, 1788, Agrippa discussed the necessity of a bill of rights and amendments to the Constitution. He argued "that all the power of government originally reside in the body of the people and...they appoint certain persons to administer the government..."¹⁶ He added that supporters of the Constitution "can have no objection to affixing a declaration in favour of the rights of states and citizens..."¹⁷ Agrippa also provided a list of proposed amendments that focused primarily on limiting the power of the federal government and strengthening the power and influence of the states. His suggested amendments limit the power of Congress to control elections, regulate commerce, levy taxes; limit the power of the judiciary and the president; and guarantee the states the right to make and enforce laws, to control their militias, and the right to coin money.¹⁸ Agrippa's thoughts about a bill of rights and his proposed amendments were radical, even for an Antifederalist. He subscribed to a Lockean liberal theory of the origin of government and proposed that both state and citizen rights be included in the bill of rights. In his proposed amendments, however, he focused primarily on increasing state power and weakening the federal government. His preoccupation with restricting the central government and empowering the states indicates a strong republican influence.

As a woman, Mercy Otis Warren was unusual among the Antifederalist writers. An active member of the founding generation, Warren knew and corresponded with leading patriot figures, notably her sometime friends John and Abigail Adams. The Warren-Adams friendship was a casualty of the ratification debate; the Adams were strong supporters of the Constitution and Otis Warren vigorously opposed it. In the years before the war, she personally contributed to the patriot cause with several anti-British plays. After Massachusetts ratified the Constitution she wrote an Antifederalist pamphlet “Observations on the New Constitution and on the Federal and State Conventions” under the pseudonym of A Columbian Patriot.

Warren supported an individualistic interpretation of the bill of rights and a Lockean liberal interpretation of the origin and purpose of government.

Man is born free, and possessed of certain unalienable rights—that government is instituted for the protection, safety, and happiness of the people, and not for the profit, honor or private interest of any man, family or class of men. That the origin of all power is in the people, and that they have an incontestable right to check the creatures of their own creation, vested with certain powers to guard the life, liberty and property of the community¹⁹

Warren stated that “the rights of individuals ought to be the primary object of all government, and cannot be too securely guarded by the most explicit declarations in their favor.”²⁰ However, her specific complaints concerning the lack of a bill of rights were grounded in the republican tradition of suspicion of authority and the use of bills of rights to limit the abuse of power. Warren argued that one of the Constitution’s flaws was that it offered no security for either freedom of conscience or freedom of the press. Her concern was not that these were inherently inalienable rights that should be acknowledged as sacrosanct, but that the lack of these rights was one less check on the development of despotism.²¹ Warren displayed a unique mix of theoretical Lockean liberalism and pragmatic republicanism.

Under the influence of revolutionary hero, Samuel Adams, Massachusetts was the first ratifying convention to recommend amendments. The addition of amendments was a compromise that gave the Federalists enough votes for ratification but also took into account Antifederalist fears and objections. On February 4, 1788 the amendment committee submitted the final list of nine amendments to the general convention. These proposed amendments demonstrate a combination of Lockean liberal and republican influence. The convention recommended “that it be explicitly declared, that all powers not expressly delegated by the aforesaid Constitution, are reserved to the several States, to be by them exercised.”²² The convention also recommended that Congress not levy direct taxes unless absolutely necessary and not without first applying to the states. They suggested that Congress refrain from interfering in elections unless absolutely necessary and that the jurisdiction of the federal and supreme courts be limited to cases of specific monetary value. In addition to these states’ rights amendments the Convention also recommended that the individual rights to indictment by a grand jury and to a trial by jury be guaranteed.²³

The Massachusetts convention marks a significant compromise in the ratification debate. The inclusion of recommended amendments garnered enough support to allow ratification but it also respected Antifederalist concerns. Both Federalists and Antifederalists could be content with outcome. With the addition of recommended amendments the Massachusetts convention began a trend of compromise that facilitated ratification in other states including Virginia and New York.

Virginia

The ratification debate was especially intense in Virginia. Both the Federalists and Antifederalists could boast keen minds, famous names, and considerable political influence. The most famous Virginian Federalists were George Washington and James Madison. Washington served as the president of the Constitutional Convention and supported ratification. His popularity, influence, and support were very beneficial to the Federalist cause in Virginia and the nation as a whole. In the Virginia state ratifying convention, Antifederalists faced a difficult opponent in James Madison. As the architect of the Constitution, Madison had a large stake in the outcome of the convention. Fortunately for them, Virginia Antifederalists were also able to field political heavyweights such as Patrick Henry, George Mason, and Richard Henry Lee.

Richard Henry Lee is one of the more well-known founders among the Antifederalists. From a respected Virginia family, Lee contributed considerably to United States political history. He was one of Virginia's delegates to the Second Continental Congress and a signer of the Declaration of Independence. He helped write the Article of Confederation and was serving as one of Virginia's representatives in Congress at the time of the Constitutional Convention and ratification debate. In a letter to Edmund Randolph, the Governor of Virginia, Lee detailed the problems he saw in the Constitution. Lee deplored the absence of a bill of rights and in particular the inadequate protection of the right to trial by jury. "Yet there is no restraint in form of a bill of rights, to secure...that residuum of human rights, which is not intended to be given up to society, and which indeed is not necessary to be given for any good social purpose. The rights of conscience, the freedom of the press, and the trial by jury are at mercy."²⁴ He presented the familiar Lockean liberal concept of retaining rights not expressly given away.

In his postscript to this letter, Lee stated that a bill of rights and amendments should be added to the Constitution. "Declarations and reservations are necessary to prevent the just rights

and liberty of mankind from the silent powerful and ever active conspiracy of those who govern...the new constitution...[should] be bottomed upon a declaration or bill of rights, clearly and precisely stating the principles upon which this social compact is founded.”²⁵ In his proposed bill of rights Lee included a number of individual natural rights such as, freedom of religion, freedom of the press, right to trial by jury in civil and criminal cases, prohibition of excessive fines, excessive bail, and cruel and unusual punishment, the right of peaceable assembly for petition, and protection against unreasonable searches and seizures.²⁶ He also included several amendments to curtail the power of the federal government such as the severe restriction of standing armies in a time of peace and the creation of a council of advisors to replace the position of the vice president and limit the extent of the president’s appointive powers. Lee combined a concern for individual rights influenced by Lockean liberalism with a suspicion of conspiracy and fear of abuse of a standing army and appointive power that was heavily influenced by the republican tradition.

Patrick Henry is probably the most famous Founding Father among the Antifederalists. Known primarily for his political activities in the years preceding the Revolution, Henry remained politically active and influential in Virginia after the war, serving several times as governor. This famed orator led the Antifederalist opposition in the Virginia ratifying convention. Henry’s speeches combine aspects of the Lockean liberal and the republican traditions in a dramatic and bombastic style. In a June 4, 1788 speech on the dangerous innovation of the Constitution, Henry addressed the issue of states’ rights in the preamble of the Constitution. “Sir, give me leave to demand, what right they had to say, *We, the People*? My political curiosity, exclusive of my anxious solicitude for the public welfare, leads me to ask who

authorized them to speak the language of *We, the People*, instead of *We, the States*? States are the characteristics, and the soul of a confederation.”²⁷

In two speeches given before the convention on June 7 and June 16, 1788, Henry argued the importance of a bill of rights with rhetorical flair. On June 7 Henry argued for a Lockean liberal notion of individual natural rights in the Virginia Bill of rights: “There are certain political maxims which no free people ought ever to abandon. Maxims of which the observance is essential to the security of happiness... We have one, Sir, *That all men are by nature free and independent, have certain inherent rights, of which, when they enter into society, they cannot by any compact deprive or divest their posterity*... Our Bill of Rights contains those admirable maxims.”²⁸

On June 16, Henry again lauded the protection of natural liberties Virginia had enshrined in her bill of rights “She most cautiously and guardedly reserved and secured those invaluable, inestimable rights and privileges, which no people, inspired with the least glow of the patriotic love of liberty, ever did, or ever can, abandon.”²⁹ But, he claimed, Virginia’s love of liberty and reverence for natural rights would be meaningless if the Constitution did not guarantee those same rights. Henry also employed some republican rhetoric about the potential abuse of power by the federal government: “The officers of Congress may come upon you, fortified with all the terrors of paramount federal authority... They may... unless restrained by a Bill of Rights, or some similar restrictions, go into your cellars and rooms, and search, ransack and measure, every thing you eat, drink and wear.”³⁰

As previously quoted, Henry demanded that the right of the states to impose direct taxation in a speech on June 25, 1788. In the same speech he argued for more amendments to be

included in Virginia's proposed amendments—amendments that would limit the power of the federal government. He mentioned the right of the state to control the militia, inclusion of the House of Representatives in the process of the ratification of national treaties, and the absolute security of the right to trial by jury.³¹ Like many of his fellow Antifederalists, Henry used aspects of both the Lockean liberal tradition and the republican tradition to argue for protection of state and individual rights.

The Virginia ratifying convention proposed a number of amendments for both state and individual rights. The Virginians stated “that there are certain natural rights of which men, when they form a social compact, cannot deprive or divest their posterity; among which are the enjoyment of life and liberty, with the means of acquiring, possessing, and protecting property.”³² They also included the right to a fair and prompt trial by jury in a local vicinity, the right to due process of law, the prohibition of excessive bail, excessive fines and cruel and unusual punishments, the prohibition of unreasonable searches and seizures, the right of peaceful assembly, the right to bear arms, and freedom of religion, speech and the press.³³ For the protection of states' rights and the limitation of federal power the Virginians proposed that all rights not delegated to the federal government be reserved to the states. They declared that the proceedings of Congress and the public budget be published annually and that states should control their militias. Among other things, they also suggested a limited term for the president, the restriction of a standing army in peacetime, the restriction of the taxation powers of the federal government and the restriction of the power of Congress to regulate commerce.³⁴

Although it did not satisfy staunch Antifederalists like Patrick Henry, the proposal of the convention recommended protection for state and individual rights. The influence of Lockean liberalism is most evident in the declaration and amendments regarding the nature and specific

guarantees of inalienable natural rights. The influence of the republican tradition is evident in the amendments to protect states' rights and limit the power of the federal government. Like Massachusetts, the Virginia convention exhibited influences of both liberalism and republicanism in its proposed amendments.

New York

New York was the last of these influential and populous states to ratify the Constitution. There was a strong Antifederalist presence in New York among merchants and rural farmers. Both Federalist and Antifederalists had a considerable length of time to prepare their arguments. The convention was not convened until June 1788 and ratification occurred in July. The vote for ratification was extremely close with 30 for and 25 against.³⁵ Two enormously influential New York Antifederalist authors were Brutus and the Federal Farmer. These writers were important Antifederalist figures for both New York and the nation as a whole.

The "Letters from the Federal Farmer to the Republican" were published in New York in two sets in 1787 and 1788 respectively. Together these letters represent one of the most extensive, persuasive, and important critiques of the Constitution presented by an Antifederalist. The identity of the Federal Farmer is unknown, but most recent scholarship suggests that the letters were written by a New York merchant, Melancton Smith.³⁶ Regardless of his real identity, the Federal Farmer presents an admirable Antifederalist assessment of the Constitution.

In an early letter regarding the essentials of a free government the Federal Farmer takes a decidedly Lockean view of natural rights and their place in government. "There are certain

unalienable and fundamental rights, which in forming the social compact, ought to be explicitly ascertained and fixed—a free and enlightened people in forming this compact, will not resign their rights to those who govern, and they will fix limits to their legislators and rulers.”³⁷

Government was instituted to protect natural rights but citizens should limit the power of government to ensure the protection of those natural rights. In the same letter he warns that the new Constitution is a threat to state sovereignty.

Unless the people make some great exertions to restore to the state governments their powers in matters of internal police; as the powers to lay and collect, exclusively, internal taxes, to govern the militia, and to hold the decisions of their own judicial courts upon their own laws final, the balance cannot possibly continue long; but the state governments must be annihilated, or continue to exist for no purpose.³⁸

In his second series of letters the Federal Farmer devotes an entire letter to the importance of the bill of rights. In this letter he first addresses the Federalist objection that a bill of rights should not be added because it could not feasibly include all of the people’s rights. They argued that if only some fundamental rights were enumerated then it could be assumed that the rest were surrendered to the government. A Lockean liberal influence is very evident in the Federal Farmer’s reply:

The supreme power is undoubtedly in the people, and it is a principle well established...that they reserve all powers not expressly delegated by them to those who govern...We do not by declarations change the nature of things, or create new truths, but we...establish in the minds of the people truths and principles which they might never otherwise have thought of, or soon forgot...What is the usefulness of a truth in theory, unless it exists constantly in the minds of the people.³⁹

In addition to calling for the acknowledgement of the right to freedom of religion and the right to trial by jury, the Federal Farmer advocated the inclusion of many other rights. In language strikingly similar to other Antifederalists and the actual text of the Bill of Rights the Federal Farmer argued for the right of a person to know the charges made against him, the right

to remain silent, the right to indictment by a grand jury, the right to produce proof or witnesses in his favor, the right to confront the witnesses against him, the right to a prompt and fair trial, and the right of security against unreasonable searches and seizures.⁴⁰ The importance of these very specific rights was rooted in the liberal concern for the protection of life, liberty and property, as well as the republican concern that the exercise of government authority occur only by due process of law.

In his discussion of the freedom of the press the Federal Farmer takes a republican view. He acknowledges that freedom of the press is a fundamental right and calls for its inclusion in the federal bill of rights. But he is especially insistent that Congress should not have the right to tax the press, since the power to tax something implied the power to control it. “[A] power to tax the press at discretion, is a power to destroy or restrain the freedom of it...A free press is the channel of communication as to mercantile and public affairs; by means of it the people in large countries ascertain each others sentiments; are enabled to unite, and become formidable to those rulers who adopt improper measures.”⁴¹ Not only was freedom of the press a right, but was an important means of publicizing and opposing a government’s abuse of power.

Throughout his letters the Federal Farmer, presented a strong case for the inclusion of the bill of rights in the Constitution. He embraced a Lockean view of the origin and role of natural rights in government, as well as demonstrating a strong republican desire to preserve states’ rights as a check against tyranny. As a whole the Federal Farmer’s opinions about a bill of rights present an excellent example of the blend of the liberal and republican traditions in Antifederalism.

Like the Federal Farmer, Brutus was an accomplished Antifederalist author, who wrote an important series of essays, and whose real identity remains a mystery. Various historians have speculated about Brutus's real name, but there is no general consensus. The essays were published in *The New York Journal* in 1787 and 1788 and provide one of the best and most direct Antifederalist rebuttals of *The Federalist*.⁴²

Brutus began his discussion of the necessity of a bill of rights with a very Lockean description of life in the state of nature. He argued that by nature humans are free and in the state of nature every individual pursues his own interest, but often the weak and unwary were forced to subject to the strong and cunning. To promote the common good, humans agreed to form government and in doing so voluntarily gave up some of their natural rights.

But it is not necessary, for this purpose, that individuals should relinquish all their natural rights, Some are of such a nature that they cannot be surrendered. Of this kind are the rights of conscience, the right of enjoying and defending life, etc. Others are not necessary to be resigned, in order to attain the end for which government is instituted, these therefore ought not to be given up. To surrender them, would counteract the very end of government, to wit, the common good. From these observations it appears, that in forming a government on its true principles, the foundation should be laid...by expressly reserving to the people such of their essential natural rights, as are not necessary to be parted with.⁴³

Brutus proceeded to answer the Federalist argument that the Constitution needed no bill of rights because citizens were protected under the bills of rights of their respective states. Brutus pointed out that the Constitution superseded all state laws, guarantees, and constitutions so it should have its own guarantee of rights. "It reaches to every thing which concerns human happiness—Life, liberty and property are under its controul."⁴⁴ He mentioned the rights guaranteed in a number of state bills of rights that the federal government could override. He cited an individual's right to know the charges against him, the right to remain silent, the right to

confront the witnesses against him, the right to counsel, and the right to a trial by jury in the vicinity of the alleged crime. Brutus also mentioned the prohibitions of excessive bail, cruel and unusual punishments, and unreasonable searches and seizures without warrants supported by oath. While most of these rights were the same as those promoted by the Federal Farmer, Brutus mentioned a guarantee of freedom that was extremely important in the republican tradition. “[A] well regulated militia is the proper and natural defense of a free government—That as standing armies in time of peace are dangerous, they are not to be kept up, and that the military should be kept under strict subordination to, and controuled by the civil power.”⁴⁵ He added that the power of the president and the senate to make nationally binding treaties without legislation rendered a declaration of inviolable rights even more important. Brutus concluded his argument for a bill of rights with the warning that “...persons who attempt to persuade people, that such reservations were less necessary under this constitution than under those of the states, are wilfully endeavouring to deceive, and to lead you into an absolute state of vassalage.”⁴⁶

Like the Federal Farmer, Brutus drew his understanding of the origin and purpose of both natural rights and government from Lockean liberal ideology. He emphasized important individual liberties such as the right to trial by jury and the protection against unreasonable searches and seizures. However Brutus was also influenced by the republican tradition in his insistence that as a principle, protection against standing armies ought to be included in the federal bill of rights. Brutus’s opinions about the bill of rights represent a mixture of both the liberal and republican traditions.

The state of New York ratified the Constitution July 26, 1788. In their declaration of ratification the members of the Constitution included two parts. They provided a statement of truths and rights, as well as a list of the amendments they wanted in the Constitution. At the

beginning of their statement, the delegates declared “That all Power is originally vested in and consequently derived from the People, and that Government is instituted by them for their common Interest Protection and Security. That the enjoyment of Life, Liberty and the pursuit of Happiness are essential rights which every Government ought to respect and preserve.”⁴⁷ Also in this declaration they listed a number of individual rights, such as freedom of religion, the right to bear arms, the right to due process of law, and the right to trial by jury. Although they listed some states’ rights in their declaration, the delegates included a list of proposed amendments that dealt primarily with curtailing the power of the federal government. They advocated limiting the terms and powers of the President, limiting the power of the federal judiciary, and limiting the federal powers of taxation.⁴⁸

The Antifederalists did not have enough influence to stop ratification in New York, but their influence is evident in the statement of rights and proposed amendments. The New York ratification documents present a unique blend of Lockean liberal and Republican ideology. Thoughts about the origin of government and the protection of individual liberties stemmed from the influence of Lockean liberalism. The influence of the republican tradition is evident in the New York delegates’ concern for states’ rights and their desire to curtail the power of the federal government.

The amendments Antifederalists from Pennsylvania, Massachusetts, Virginia and New York proposed to add to the Constitution are a fascinating blend of concern for fundamental individual liberties, the desire to strengthen the role of the states, and suspicion of the broad powers of the federal government. This combination of individual and private, communitarian and public demonstrates the influence of both the English republican tradition and Lockean

liberalism in Antifederalist thought. The Antifederalists drew their theories and concern for the protection of natural rights and the origin and purpose of government from the Lockean liberal tradition. At the same time, the Antifederalists' preoccupation with guaranteeing the rights of the states and their suspicion of central governments, especially powerful ones, are heavily influenced by republicanism. The combination of these philosophies in Antifederalist thought challenges the view that liberalism and republicanism were necessarily contradictory ideologies.

The significance of the Antifederalist amendments is that they clearly demonstrate the level of conflict that surrounded the ratification debate. The founding generation was divided over the Constitution and the first amendments were controversial issues from the very beginning. The importance of this conflict is that it demonstrates that the founding generation was not unified or of one mind and to portray them as such diminishes their triumphs. The founders faced tremendous challenges in the early republic, but with considerable patience and compromise they were able to work through division and conflict to achieve the Constitution and the Bill of Rights. Their success is all the greater because of the obstacles they faced and their achievements should be a source of pride and hope for their American descendants who face conflict and division today.

¹ Patrick Henry, "Speech in the Virginia State Ratification Convention, June 25, 1788" in *Birth of the Bill of Rights: Encyclopedia of the Antifederalists: Volume Two: Major Writings*. ed. Jon L. Wakelyn, (Westport, Connecticut: Greenwood Press, 2004) 298.

Birth of the Bill of Rights: Encyclopedia of the Antifederalists: Volume Two: Major Writings. ed. Jon L. Wakelyn, (Westport, Connecticut: Greenwood Press, 2004) 298.

² Bernard Bailyn, *The Ideological Origins of the American Revolution*, (Cambridge: Belknap Press of Harvard University Press, 1967,); Pocock, J. G. A. *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition*, (Princeton: N.J. Princeton University Press, 1975,); Banning, Lance. *The Jeffersonian Persuasion: Evolution of a Party Ideology*. (Ithaca, N.Y.: Cornell University Press, 1978,); Saul Cornell, *The Other Founders : Anti-Federalism and the Dissenting Tradition in America, 1788-1828* (Chapel Hill: Published for the Omohundro Institute of Early American History and Culture Williamsburg Virginia by the University of North Carolina Press, 1999.)

³ Isaac Kramnick, "The Main Themes of Constitutional Discussion," in *Major Problems in the Era of the American Revolution: 1760-1791*, ed. Richard D. Brown, (Lexington, Massachusetts: D.C. Heath and Company, 1992,) 550.

⁴ Joyce Appleby, *Capitalism and a New Social Order: The Republican Vision of the 1790s*, (New York: New York University Press, 1984) 20-21.

⁵ Appleby, *Capitalism*; Breen, T.H., *The Marketplace of Revolution: How Consumer Politics Shaped American Independence*, (New York: Oxford University Press, 2004).

⁶ Kramnick, "Main Themes," 549.

⁷ Herbert J. Storing, ed. *The Complete Anti-Federalist*, (Chicago: University of Chicago Press, 1981,) 3: 3-4.

⁸ A Federal Republican, "A Review of the Constitution Proposed by the Late Convention," in *Complete Anti-Federalist*, 3:84.

⁹ *Ibid*, 3:85.

¹⁰ Robert Whitehill, "Speech in the Pennsylvania State Ratification Convention, December 12, 1787," in *Birth of the Bill of Rights*, 2:30-31.

¹¹ *Ibid*, 31.

¹² "The Address and Reasons of the Dissent of the Minority of the Convention of Pennsylvania to Their Constituents," in *Complete Anti-Federalist*, 3:157.

¹³ *Ibid*, 3:152.

¹⁴ *Ibid*, 3:151.

¹⁵ "James Winthrop" in *Birth of the Bill of Rights: Encyclopedia of the Antifederalists: Volume One: Biographies*. ed. Jon L. Wakelyn, (Westport, Connecticut: Greenwood Press, 2004) 231-234.

¹⁶ "Letters of Agrippa," in *Complete Anti-Federalist*, 4:108.

¹⁷ *Ibid*, 4:111.

¹⁸ *Ibid*, 4: 112-113.

¹⁹ Mercy, Otis Warren, "Observations on the New Constitution and on the Federal and State Conventions", (Boston; New York, 1788,) *Sabin Americana*, Gale, Cengage Learning, Kansas State University Libraries, 6.

²⁰ Ibid, 12-13.

²¹ Ibid, 9.

²² *Debates and Proceedings in the Convention of the Commonwealth of Massachusetts, Held in the Year 1788, And Which Finally Ratified the Constitution of the United States*, (Boston: William White, 1856) 83.

²³ Ibid, 84-85.

²⁴ "Letter of Richard Henry Lee to Edmund Randolph" in *Complete Anti-Federalist*, 5:114.

²⁵ Ibid, 5:116.

²⁶ Ibid, 5:116-117.

²⁷ Patrick Henry, "Speech" in *Birth of the Bill of Rights*, 279.

²⁸ "Speeches of Patrick Henry in the Virginia State Ratifying Convention," in *Complete Anti-Federalist*, 5:246-247.

²⁹ Ibid, 5:247.

³⁰ Ibid, 5:2

³¹ Patrick Henry, "Speech" in *Birth of the Bill of Rights*, 298-299.

³² "Virginia State Ratifying Convention" in *The Essential Bill of Rights: Original Arguments and Fundamental Documents*, Gordon Lloyd and Margie Lloyd, eds., (Lanham, Maryland: University Press of America, 1998,) 314.

³³ Ibid, 315-317.

³⁴ Ibid, 317-319.

³⁵ Storing, ed. *Complete Anti-Federalist*, 6:3-4.

³⁶ Cornell, *The Other Founders*, 88, note 11.

³⁷ Walter Hartwell Bennett, ed., *Letters from the Federal Farmer to the Republican* (University, Alabama: University of Alabama Press, 1978) 11.

³⁸ Ibid, 12.

³⁹ Ibid, 105-106.

⁴⁰ Ibid, 110.

⁴¹ Ibid, 112.

⁴² Storing, ed. *Complete Anti-Federalist*, 2:358.

⁴³ "Essays of Brutus," in *Complete Anti-Federalist*, 2:373.

⁴⁴ Ibid, 2:374.

⁴⁵ Ibid, 2:375.

⁴⁶ Ibid, 2:377.

⁴⁷ New York State Ratifying Convention, "Ratification of the Constitution by the State of New York; July 26, 1788," http://avalon.law.yale.edu/18th_century/ratny.asp

⁴⁸ Ibid.

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Appendix A

Selected amendments proposed by the dissenting minority of the ratifying convention of Pennsylvania and amendments recommended by the state ratifying conventions of Massachusetts, Virginia and New York that were not included in the Constitution.

Pennsylvania

The inhabitants of the several states shall have the liberty to fowl and hunt in seasonable times, on the lands they hold, and on all other lands of the United States not inclosed, and in like manner to fish in all navigable waters, and others not private property, without being restrained therein by any laws to be passed by the legislature of the United States.¹

That no law shall be passes to restrain the legislatures of the several states from enacting laws for imposing taxes, except imposts and duties on goods imported and exported, and that no taxes, except imposts and duties upon goods imported and exported, and postage on letters shall be levied by the authority of Congress.²

That the legislative, executive, and judicial powers be kept separate; and to this end that a constitutional council be appointed, to advise and assist the president, who shall be responsible for the advice they give, hereby the senators would be relieved from almost constant attendance; and also that the judges be made completely independent.³

That no treaty which shall be directly opposed to the laws of the United States in Congress assembled, shall be valid until such laws shall be repealed, or made conformable to such treaty; neither shall the any treaties be valid which are in contradiction to the constitution of the United States, or the constitutions of the several states.⁴

Massachusetts

That Congress do not lay direct Taxes but when the Monies arising from the Impost & Excise are insufficient for the publick exigencies nor then until Congress shall have first made a requisition upon the States to assess levy & pay their respective proportions of such Requisition agreeably to the Census fixed in the said Constitution; in such way & manner as the Legislature of the States shall think best, & in such case if any State shall neglect or refuse to pay its

proportion pursuant to such requisition then Congress may assess & levy such State's proportion together with interest thereon at the rate of Six per cent per annum from the time of payment prescribed in such requisition.⁵

That Congress erect no Company of Merchants with exclusive advantages of commerce.⁶

The Supreme Judicial Federal Court shall have no jurisdiction of Causes between Citizens of different States unless the matter in dispute whether it concerns the realty or personally be of the value of three thousand dollars at the least. nor shall the Federal Judicial Powers extend to any actions between Citizens of different States where the matter in dispute whether it concerns the Realty or personally is not of the value of Fifteen hundred dollars at the least.⁷

Virginia

That elections of representatives in the legislature ought to be free and frequent, and all men having sufficient evidence of permanent common interest with and attachment to the Community ought to have the right of suffrage: and no aid, charge, tax or fee can be set, rated, or levied upon the people without their own consent, or that of their representatives so elected, nor can they be bound by any law to which they have not in like manner assented for the public good.⁸

That the people have a right to keep and bear arms; that a well regulated Militia composed of the body of the people trained to arms is the proper, natural and safe defence of a free State. That standing armies in time of peace are dangerous to liberty, and therefore ought to be avoided, as far as the circumstances and protection of the Community will admit; and that in all cases the military should be under strict subordination to and governed by the Civil power.⁹

When Congress shall lay direct taxes or excises, they shall immediately inform the Executive power of each State of the quota of such state according to the Census herein directed, which is proposed to be thereby raised; And if the Legislature of any State shall pass a law which shall be effectual for raising such quota at the time required by Congress, the taxes and excises laid by Congress shall not be collected, in such State.¹⁰

That the Journals of the proceedings of the Senate and House of Representatives shall be published at least once in every year, except such parts thereof relating to treaties, alliances or military operations, as in their judgment require secrecy.¹¹

That those clauses which declare that Congress shall not exercise certain powers be not interpreted in any manner whatsoever to extend the powers of Congress. But that they may be construed either as making exceptions to the specified powers where this shall be the case, or otherwise as inserted merely for greater caution.¹²

New York

That the Jurisdiction of the Supreme Court of the United States, or of any other Court to be instituted by the Congress, is not in any case to be encreased enlarged or extended by any Fiction Collusion or mere suggestion; And That no Treaty is to be construed so to operate as to alter the Constitution of any State.¹³

That the Congress do not impose any Excise on any Article (except Ardent Spirits) of the Growth Production or Manufacture of the United States, or any of them.¹⁴

That the Power of Congress to pass uniform Laws concerning Bankruptcy shall only extend to Merchants and other Traders; and that the States respectively may pass Laws for the relief of other Insolvent Debtors.¹⁵

That the President or person exercising his Powers for the time being, shall not command an Army in the Field in person, without the previous desire of the Congress.¹⁶

Provided that no more than one Judge, other than Judges of the Supreme Court of the United States, shall come from one State- That the Congress be authorized to pass Laws for compensating the said Judges for such Services and for compelling their Attendance- and that a Majority at least of the said Judges shall be requisite to constitute the said Court-that no person impeached shall sit as a Member thereof. That each Member shall previous to the entering upon any Trial take an Oath or Affirmation, honestly and impartially to hear and determine the Cause- and that a Majority of the Members present shall be necessary to a Conviction.¹⁷

¹“The Address and Reasons of the Dissent of the Minority of the Convention of Pennsylvania to Their Constituents,” in *The Complete Antifederalist*, ed. Herbert J. Storing, (Chicago: University of Chicago Press, 1981) 3: 151-152.

²Ibid.

³Ibid.

⁴Ibid.

⁵Massachusetts State Ratifying Convention, “Ratification of the Constitution by the State of Massachusetts; February 6, 1788” http://avalon.law.yale.edu/18th_century/ratma.asp

⁶Ibid.

⁷Ibid.

⁸Virginia State Ratifying Convention, “Ratification of the Constitution by the State of Virginia; June 26, 1788” http://avalon.law.yale.edu/18th_century/ratva.asp

⁹Ibid.

¹⁰Ibid.

¹¹Ibid.

¹²Ibid.

¹³New York State Ratifying Convention, “Ratification of the Constitution by the State of New York; July 26, 1788,” http://avalon.law.yale.edu/18th_century/ratny.asp

¹⁴Ibid.

¹⁵Ibid.

¹⁶Ibid.

¹⁷Ibid.